

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4842 OF 2005

Jaknush Majur Kamgar Sahakari
Sanstha and Anr.

... Petitioners

Vs.

Yashwant Yadav Mhase and Ors.

... Respondents

Mr. L.H. Patil for the petitioners.

Ms. Gauri Godse for respondent 1.

Ms. Mhaispurkar, AGP for respondents 2 and 3.

CORAM: SMT. RANJANA DESAI, J.

DATED: 27TH SEPTEMBER, 2005.

P.C.:-

1. Petitioner 1 is a co-operative society. Petitioner 2 is the Chairman of the said society. Respondent 1 is the sub-contractor. The business of the said society is to construct bridges, roads, buildings, etc. It is the petitioner's case that respondent 1 was entrusted with the work by petitioner 1 as its agent.

2. There appears to be some dispute between the petitioners and respondent 1 about respondent 1's dues. Respondent 1, therefore, filed Special Civil Suit No.51 of 2003 in the Court of Civil Judge, Senior Division, Panvel for recovery of money. In that suit, the petitioners made an application under section 9A of the

Code of Civil Procedure, 1908 (for short, "the CPC") praying that the issue regarding jurisdiction of the court to try the instant suit be framed. The trial court by the impugned order, dismissed the application and, hence, this petition.

3. I have heard, at some length, Mr. Patil, the learned counsel appearing for the petitioners. He drew my attention to sections 91 and 163 of the Maharashtra Co-operative Societies Act, 1960 and contended that as per these provisions, the civil court cannot entertain the instant suit. The learned judge, therefore, ought to have framed the issue. The learned counsel contended that the learned judge erred in rejecting the application filed by the petitioners. In support of his contentions, he relied on the judgments of the Supreme Court in **Deccan Merchants Co-operative Bank Ltd. v. M/s. Dalichand Jugraj Jain and others, AIR 1969 SC 1320; O.N. Bhatnagar v. Rukibai Narsindas Bhavnani and others, 1982 Mh.L.J. 484,** and the judgments of this court in **The Malvan Co-operative Urban Bank, Ltd. v. Kamalakar Narayan Zantye, 1956 B.L.R. 629 and Lakhani Sahakari Shetki Kharedi Vikri Sanstha Ltd., Lakhani v. Moreshwar Bapu Chandar Bapu Walode, 1978 Mh.L.J. 59.**

4. As against this, Ms. Godse, the learned counsel for respondent 1 contended that the petitioners could not have made an application under section 9A of the CPC because no interim application was pending before the

trial court. In support of her submission, she relied on the judgment of this court in **Shraddha Associates, Pune and another v. St. Patrick's Town Co-operative Housing Society Ltd. and others, 2003(2) Mh.L.J. 219.**

5. I find considerable force in Ms. Godse's submission. Since no interim application was pending before the trial court, the petitioners could not have filed any application under section 9A of the CPC. The law in this regard is well settled and the reliance placed by Ms. Godse in **Shraddha Associates' case (supra)** is apt. The trial court has, however, not considered this aspect and gone on to dismiss the application on merits. This approach is wrong. The trial court ought to have held that the application is not maintainable at this stage at all. Hence, this writ petition cannot be entertained. However, the petitioners will be at liberty to raise the issue as regards jurisdiction if any interim application is made or otherwise at the appropriate stage of the trial. In the circumstances of the case, therefore, the impugned order is set aside. It is clarified that as and when the trial court is required to examine the aspect of jurisdiction, it shall do it independently and uninfluenced by the observations made in the impugned order dated 1/1/2004.

6. All contentions of both sides are kept open. In the circumstances of the case, the suit is expedited.

7. Writ petition is disposed of.

(SMT. RANJANA DESAI, J.)